

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MICHAEL E. SEXTON

Plaintiff,

v.

FIRETREE, INC. (PENN-CAP), *et al.*,

Defendants.

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CIVIL NO. 3:CV-08-0789

(Judge Caputo)

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

This action was commenced on April 28, 2008 by Plaintiff Michael E. Sexton, an inmate confined at the Frackville State Correctional Institution ("SCI-Frackville") in Frackville, Pennsylvania. Sexton did not file a proper complaint. He neither paid the filing fee nor requested leave to proceed *in forma pauperis*. Therefore, by letter dated May 7, 2008, he was directed to file a complaint on the proper forms and to either pay the filing fee or file a motion to proceed *in forma pauperis* and authorization form. (Doc. 3.) He was provided with all of the necessary forms.

On May 12, 2008, Sexton filed a Motion for leave to proceed *in forma pauperis* (Doc. 4) and Authorization (Doc. 5). He subsequently filed a document entitled "Complaint" that is not on a standard civil rights complaint form. (Doc. 8.) By Order dated June 17, 2008, Sexton's claims against the Department of Veteran's Affairs, the Veteran's Administration Hospital, and Firetree, Incorporated were dismissed pursuant to 28 U.S.C. §1915(e)(2)(B)(ii). (See Doc. 10.) Because his claims against these entities could not be amended to state a claim upon which relief can be granted, dismissal was with prejudice.

(See *id.*) While Sexton's claims against the SCI-Frackville medical department also were dismissed for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii), dismissal was without prejudice. (See *id.*) As such, Sexton was given the opportunity to file an amended complaint within twenty (20) days as to his allegation that the SCI-Frackville medical department refused to provide him with medications. (See *id.*)

On June 23, 2008, Sexton filed a Notice of Appeal from this Court's June 17 Order. (See Doc. 11.) On November 14, 2008, the United States Court of Appeals for the Third Circuit entered an Order dismissing Sexton's appeal for lack of jurisdiction because the June 17 Order did not constitute a final order as to all of Sexton's claims, and this Court did not direct the entry of final judgment under Fed. R. Civ. P. 54(b). (See Doc. 23.)

On July 9, 2008, while Sexton's appeal was pending, he filed two amended complaints. (See Docs. 13, 14.) In reviewing the proposed amended complaints, it does not appear that they are copies of one another, but rather two different documents. Because the Court has no idea which document Sexton intended to file as his amended complaint in this action, the Clerk of Court will be directed to strike from the record and return the two documents to Sexton. He will be afforded ten (10) days within which to comply with this Court's June 17, 2008 Order by resubmitting one (1) proposed amended complaint as to his allegation that the SCI-Frackville medical department refused to provide him with medications.

**ACCORDINGLY, THIS 19th DAY OF NOVEMBER, 2008, IT IS HEREBY ORDERED
AS FOLLOWS:**

1. The Clerk of Court is directed to strike from the record and return to

Plaintiff his filings of July 9, 2008 (Docs. 13, 14).

2. Within ten (10) days from the date of this Order, Plaintiff shall comply with this Court's June 17, 2008 Order by filing one (1) proposed amended complaint as to his allegation that the SCI-Frackville medical department refused to provide him with medications.

s/ A. Richard Caputo
A. RICHARD CAPUTO
United States District Judge